# IN THE UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA CIVIL NO:

HOLLY BROWN,	
Plaintiff,	
	) COMPLAINT
VS.	) <u>COMPLAINT</u>
FINANCIAL RECOVERY SERVICES, IN	) NC., )
Defendant.	) )

#### **INTRODUCTION**

1. This action arises out of Defendant's violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA").

#### **JURISDICTION AND VENUE**

- 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
- 3. Defendant conducts business in the state of Minnesota, personal jurisdiction is established.
  - 4. Venue in the United States District Court is proper under 28 U.S.C. § 1391(b)(2).
- 5. Declaratory relief is available pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

#### **PARTIES**

- 6. Plaintiff is a natural person residing in Oakdale, Washington County, Minnesota.
- 7. Plaintiff is allegedly obligated to pay a debt and is a consumer as defined by 15 U.S.C. § 1692a(3).

- 8. Defendant is a national corporation with a business office located in Bloomington, Illinois.
- 9. Defendant is a debt collector as defined by 15 U.S.C. § 1692a(6), and sought to collect a consumer debt from Plaintiff.
- 10. At all times relevant to this Complaint, Defendant has acted though its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers in the District of Minnesota.

#### **FACTUAL ALLEGATIONS**

- 11. The original creditor of the alleged debt is HSBC Card Services and the amount of the alleged debt is nine hundred ninety-two dollars and twenty-one cents (\$992.21). (See Exhibit A)
- 12. Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for the alleged debt.
- 13. Defendant calls Plaintiff from telephone number (866) 418-9055, approximately three (3) to four (4) times a day, seeking and demanding payment for the alleged debt.
- 14. Defendant places telephone calls without meaningful disclosure of the caller's identity as Defendant does not state the name of its company and fails to leave any voicemail messages.
- 15. Defendant has failed to identify itself as a debt collector in subsequent communications as Defendant will call Plaintiff and hang up withouth leaving a voicemail message.

# **COUNT I: VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**15 U.S.C. § 1692 et seq.

- 16. Defendant's violations of the FDCPA include, but are not limited to, the following:
  - a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of a debt.
  - b. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
  - c. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without meaningful disclosure of the caller's identity because Defendant calls Plaintiff and hangs up without leaving a voicemail message.
  - d. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt by calling Plaintiff and hanging up without leaving a voicemail message.
  - e. Defendant violated §1692e(10) of the FDCPA by failing to disclose in subsequent communications that the communication was from a debt collector as Defendant calls Plaintiff and hangs up without leave a voicemail message.
  - f. Defendant violated  $\S1692e(11)$  of the FDCPA by failing to disclose in subsequent communications that the call is from a debt collector because Defendant calls Plaintiff and hangs up without leaving a voicemail message.
  - 17. Plaintiff is entitled to her attorney's fees and costs incurred in this action.
- 18. This case presents an actual and justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for the following:

- a. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*;
- b. Actual damages
- c. Statutory damages pursuant to 15 U.S.C. § 1692k
- d. Reasonable attorneys' fees, costs pursuant to 15 U.S.C. § 1692k; and
- e. Awarding such other and further relief as may be just, proper and equitable.

## **DEMAND FOR JURY TRIAL**

Plaintiff is entitled to and hereby respectfully demands a trial by jury. US Const. amend.

7. Fed.R.Civ.Pro. 38.

Dated: March 3, 2010

## **KROHN & MOSS, LTD**

By: s/ Lee Cassie Yates\_

Lee Cassie Yates - # 352688 120 West Madison Street, 10<sup>th</sup> Floor Chicago, Illinois 60602

Telephone: (312) 578-9428

Attorney for Plaintiff

# **EXHIBIT A**

DEPT 813 1161361410028 PO BOX 4115 CONCORD CA 94524

#### ? JERUTUR KARUT KIRKO IBK KIRBA MÜNE BUKU TURBU JUKT BUKU MÜRK BURBU MOJU BUKU GUKAR KERPI KRIK KARU

Return Service Requested

February 15, 2010

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AFF188 HOLLY BROWN 6582 UPPER 23RD ST N SAINT PAUL MN 55128-4329

#### FINANCIAL RECOVERY SERVICES, INC.

P.O. Box 385908 Minneapolis, MN 55438-5908 1-866-418-9055

CLIENT: HSBC CARD SERVICES CURRENT CREDITOR: HSBC REGARDING: HSBC ACCOUNT NUMBER: XXXXXXXXXXXXXX0251 BALANCE: \$992.21

THE ACCOUNT LISTED ABOVE HAS BEEN ASSIGNED TO THIS AGENCY FOR COLLECTION. AS OF THE DATE OF THIS LETTER, YOU OWE 992.21. INTEREST, LATE CHARGES, AND OTHER CHARGES MAY OR MAY NOT BE APPLICABLE TO THIS ACCOUNT. IF SOME OR ALL OF THESE ARE APPLICABLE TO YOUR ACCOUNT, THEY MAY VARY FROM DAY TO DAY AND THUS THE AMOUNT DUE ON THE DAY YOU PAY MAY BE GREATER. HENCE, IF YOU PAY THE AMOUNT SHOWN ABOVE, AN ADJUSTMENT MAY BE NECESSARY AFTER WE RECEIVE YOUR CHECK, IN WHICH EVENT WE WILL INFORM YOU BEFORE DEPOSITING THE CHECK FOR COLLECTION. FOR FURTHER INFORMATION, WRITE THE UNDERSIGNED OR CALL 1-866-418-9055.

WE ARE AUTHORIZED T	O OFFER YOU	THE FOLLOWING	OPPORTUNITIES:

- 1. ( ) MY ACCOUNT WILL BE PAID IN FULL BY A ONE-TIME PAYMENT EQUAL TO THE BALANCE; OR
- ( ) MY ACCOUNT WILL BE SETTLED IN FULL BY A ONE-TIME PAYMENT EQUIVALENT TO 75.00% OF THE ABOVE REFERENCED BALANCE IN THE AMOUNT OF \$744.16; OR
- ( ) MY ACCOUNT WILL BE SETTLED IN FULL BY THREE EQUAL CONSECUTIVE MONTHLY PAYMENTS EQUIVALENT TO 90.00% OF THE ABOVE REFERENCED BALANCE FOR A TOTAL REPAYMENT OF \$892.99; OR
- 4. ( ) I WILL MAKE A MONTHLY PAYMENT THAT IS AFFORDABLE TO ME AT THIS TIME AS FOLLOWS, I WILL PAY

  \$\_\_\_\_\_ MONTHLY UNTIL MY ACCOUNT IS PAID IN FULL OR ANOTHER AGREEMENT IS NEGOTIATED.

  PAYMENTS WILL BE SENT ON OR BEFORE THE \_\_\_\_\_ OF EACH MONTH.

PLEASE MARK YOUR CHOICE WITH AN "X" IN THE SPACE PROVIDED AND FORWARD WITH YOUR PAYMENT TO THE ADDRESS LISTED BELOW. YOU MAY CONTACT THE REPRESENTATIVE LISTED BELOW WITH ANY QUESTIONS. WE ARE NOT OBLIGATED TO RENEW OFFERS 2 THROUGH 4 ABOVE. THE OPPORTUNITIES LISTED ABOVE DO NOT AFFECT YOUR RIGHTS DESCRIBED BELOW.

UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THIS DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS OF RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

SINCERELY.

BRANDON MOLINA ACCOUNT MANAGER TOLL FREE: 1-866-418-9055

WORK PHONE:

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR. SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Office hours are: Monday - Thursday, 7am to 8pm; Friday 7am to 5pm; Saturday 7am to noon.

\*\*\*DETACH AND RETURN THIS PORTION OF THIS NOTICE WITH YOUR PAYMENT\*\*\*

NOTE: ANY CHECK RETURNED FOR INSUFFICIENT FUNDS OR ACCOUNT CLOSED WILL BE ASSESSED A \$15.00 CHARGE.

AMOUNT ENCLOSED: FRS File#: AFF188
HOME PHONE:

FINANCIAL RECOVERY SERVICES, INC. P.O. BOX 385908
MINNEAPOLIS, MN 55438-5908

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HOLLY BROWN 6582 UPPER 23RD ST N SAINT PAUL MN 55128-4329



## **VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF MINNESOTA	)	
	) ss	
COUNTY OF WASHINGTON	)	

Plaintiff, HOLLY BROWN, having first been duly sworn and upon oath, deposes and says as follows:

- 1. I am a Plaintiff in this civil proceeding.
- I have read the above-entitled civil Complaint prepared by my attorneys and I believe
  that all of the facts contained in it are true, to the best of my knowledge, information
  and belief formed after reasonable inquiry.
- 3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
- 4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
- 5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
- 6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
- 7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified, or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

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